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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION N |
|------------------------------|-------------|----------------------|---------------------|----------------|
| 10/045,995 | 10/19/2001 | Hans Dehli | 41126/MJM/H362 | 3109 |
| 23363 | 7590 | 11/02/2004 | EXAMINER | |
| CHRISTIE, PARKER & HALE, LLP | | | DEMILLE, DANTON D | |
| PO BOX 7068 | | | ART UNIT | PAPER NUMBER |
| PASADENA, CA 91109-7068 | | | 3764 | |

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|--------------------------------------|------------------------------------|
| Office Action Summary | Application No. 10/045,995 | Applicant(s) DEHLI, HANS |
| | Examiner Danton DeMille | Art Unit 3764 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15,28,30-40 and 43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 43 is/are allowed.
- 6) ☒ Claim(s) 1-15,28 and 30-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>9/30/2, 7/30/4</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

2. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

3. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-15, 28, 30-40, 43 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-5, 7-13, 37-38, 48, 56-60 of copending Application No. 09/632315. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to leave out details to the o-ring.

5. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Objections

6. Claims 1-15, 28 are objected to because of the following informalities: There is no clear antecedent basis for "said carriage assembly" as recited in claim 1, line 10.

7. Appropriate correction is required.

Claim Rejections - 35 USC § 103

8. Claims 1, 2, 4-10, 12, 28, 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rene '262.

9. Rene teaches a massaging member 62 moveable along a support structure 36. The apparatus has a raceway 38 and a second raceway 40 on the opposite side supporting the support structure 36. Rene teaches a carriage assembly 60 including at least one guide wheel 80 and a biasing wheel 90 on the opposite side of the carriage for forcing and centering the carriage and centering the guide wheel 80 within the raceway 38.

10. It is not clear if the guide rails 38, 40 are V-shaped raceways however, Rene already teaches a V-shaped raceway 52 for supporting the support structure. It would have been obvious to one of ordinary skill in the art to modify Rene to shape the guide rails 38, 40 the same as the V-shaped guide rails 52 to more securely support the carriage in its translational movements.

11. Regarding claims 4-6, Rene teaches a bracket 12 generally planar and peripherally surrounds the support structure.

12. Claims 3, 11, 13, 14, 15, 30-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rene '262 in view of Arndt 6,190,338.

13. Arndt teaches massaging members 36a-c moving relative to a support structure 30. The support structure 30 is moveable towards and away from the massage surface. Arndt teaches column 5, lines 26-42 that the support structure 30 can be pivotally attached to the frame to provide the relative movement or can be supported by rails at both ends so it can be raised and lowered. Arndt teaches that a pivotal attachment arrangement and support rails slidably mounting the support structure are equivalent alternative ways of raising and lowering the

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support structure. It would have been obvious to one of ordinary skill in the art to further modify Rene to pivot the support structure toward and away from the massage surface as taught by Arndt as an obvious equivalent alternative way of doing the same thing.

14. Regarding claims 14, 15, Arndt teaches a handle 52 for moving the support structure. It would have been obvious to one of ordinary skill in the art to further modify Rene to use a handle to move the support structure as taught by Arndt instead of the automated means to have individual control for adjusting the position of the support means.

Allowable Subject Matter

15. Claim 43 is allowable over prior art to which the examiner is aware.

Response to Arguments

16. Applicant's arguments with respect to claims 1-15, 28, 30-40 have been considered but are moot in view of the new ground(s) of rejection.

17. Regarding Rene, applicant argues that Rene does not teach a biasing member nor a V-shaped raceway. As broadly recited the second opposing guide wheel is broadly "a biasing member" because it maintains the carriage within the guide rails. It biases or forces the other guide wheel to stay on the raceway. Without the second guide wheel the first guide wheel would fall out of the raceway. Broadly it opposes, forces and biases the first guide wheel to stay on the raceway.

18. Rene already teaches a V-shaped raceway at 52. Applying this same technology to the raceway for the other guide wheels would have been a no-brainer obvious.

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Conclusion

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

20. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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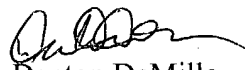
29 October, 2004

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